

Remarks/Arguments

Entry of this supplemental amendment and reconsideration of this application is respectfully requested.

This supplemental amendment is being filed concurrently with a petition under CFR 1.181 to withdraw the final rejection issued January 26, 2005 and to require entry of this supplemental amendment, which petition is incorporated by reference herein. It is intended to present an amendment that would have been presented if the final rejection of January 26, 2005 had been issued as a non final rejection. In the final rejection of January 26, 2005, Bunch US patent 5,655,245 is the primary reference relied upon. In several phone conversations with examiners Saldano and Shackelford subsequent to the final rejection, undersigned sought clarification of the examiner's reliance on Bunch in relation to the claims of the previous amendment, and expressed his views on why those claims were believed to clearly distinguish from Bunch. As it became clear to the undersigned that the examiners did not share those views, and it is applicant's intention to unequivocally distinguish this invention from Bunch, the amendment presented above is intended to do that, rather than argue the point.

In the discussions with the examiners, apart from the propriety of the final rejection, which is the subject of the petition to withdraw the final rejection, undersigned and the examiners discussed the following aspects of the present invention:

1. applicant's method of cleaning a landscape surface (claims 13-18)
2. Claim 19 and its use of the language "consisting essentially of", and
3. Claims 9-11, and their use of the language "formed in one piece"

The following remarks track the foregoing issues, as well as the other claims in this application.

1. **Claims 13-18.** Regarding claims 13-18, claim 13 has been amended above to seek to unequivocally direct that claim, *inter alia*, to a method that cleans a **landscape surface that is directly exposed to the atmosphere**, and where **atmospheric air from about the landscape surface**, dirt and/or debris and landscape rock are drawn into the intake portion of the cleaning device, and handled in the manner described by the claim.

It is respectfully submitted that such a method is not disclosed by Bunch, and there is no evidence that one of ordinary skill would be motivated to use Bunch to clean such a landscape surface, in the manner recited by the claim. Bunch is directed at cleaning gravel at the bottom of a pond, not to cleaning a landscape surface. The American Heritage Dictionary, Second College Edition, 1982, defines a "landscape" as "a view or vista of scenery **on land**" and defines "**land**" as "the solid ground of the earth, esp. as distinguished from the sea" (emphasis added). It is respectfully submitted that by that definition, the bottom of a pond is not a landscape surface. Moreover, Bunch is expressly directed to a concept for cleaning gravel from the bottom of a pond, by drawing water and gravel into his cleaning device, breaking up clusters of gravel as they are being drawn from the bottom of the pond, and effectively using the water that carries the gravel to wash the gravel. Moreover, Bunch describes "one of the novel features of the [Bunch's] invention" as projecting fluid radially inward (e.g. through openings 56, 58) to break up gravel clusters.

Thus, to apply Bunch to meet claim 13, one of ordinary skill would have to decide that despite the fact that Bunch is directed at cleaning a pond, effectively by washing the gravel with the water that carries the gravel, uses a water pump to effect that objective, and has as an important part of his invention the projecting of fluid radially inward to break up gravel clusters, there is motivation to apply Bunch to cleaning a landscape surface by drawing atmospheric air from about the landscape surface, dirt and/or debris and landscape rock into an intake of a cleaning device, and perform the other recited steps of claim 13. Moreover, one of ordinary skill would have to eliminate the radially directed fluid that is "one of the novel features" of Bunch, and is used to break up gravel clusters. Bunch explains in some detail the manner in which gravel clusters form in a pond, and how his invention breaks up those clusters as one of the novel features of his cleaning concept. Cleaning a landscape surface, according to the present invention, does **not** involve clusters of material that need to be broken up, and would **not** involve radially directed fluid to break up such clusters. In fact, it is respectfully submitted that, if anything, the use of radially directed fluid, as in Bunch, would impede applicant's method, because it would create the likelihood, or at least the potential, that fluid would be directed toward the inlet to the intake, and if that were to happen, the fluid would be hindering, rather than helping applicant's method. Accordingly, to make the modifications that would be

necessary in Bunch, in order to produce a method according to claim 13, would require recognizing the applicability of Bunch to cleaning operations other than ponds, and also eliminating features of Bunch that Bunch specifically considered novel aspects of his concept. The only motivation to do that would come only from applicant's disclosure, and not from anything in Bunch. Therefore, it is respectfully submitted that Bunch does not disclose the invention of claim 13, and it would not have been obvious to modify Bunch and use Bunch in a method according to claim 13. Hence, claim 13 is patentable over Bunch.

Claims 14-18 and 21 include the recitations of claim 13, and are submitted to be patentable over Bunch for the reasons set forth above. Moreover, claims 14-18 further define applicant's method in a manner that is not disclosed in or obvious from Bunch. For example, Claim 17 further defines, *inter alia*, the intake portion being oriented at about 90 degrees to the landscape surface as the atmospheric air from about the landscape surface, dirt and/or debris and landscape rock are drawn into the intake portion. Claim 18 further defines, *inter alia*, and a pair of handles connected with the intake portion in a configuration that enables an operator to grasp both handles and manipulate the intake portion to a position in which the intake portion is located on the landscape surface at an orientation of about 90 degrees to the landscape surface and to lift the intake portion vertically with respect to the landscape surface. Bunch discloses handles 48, and although Bunch states, at column 4, lines 57-59, that the bottom end of the gravel cleaner need not be angled, or can have a different angle than depicted, whichever is more comfortable for a particular operator, it is respectfully submitted that with Bunch's disclosure, it is not at all clear how or why the gravel cleaner would not be angled, at least to some degree. For example, it would appear that Bunch would have to extend at least at some angle to be operated in the manner disclosed by Bunch, in order to be comfortably operated by an operator. Moreover, with handles 48 of Bunch, it is also not seen how Bunch would be comfortably operated by an operator unless Bunch were oriented at an angle to the pond bottom. Bunch explicitly teaches that in cleaning a pond, an operator would grasp handles 48 by standing behind the gravel cleaner (column 3, lines 37-50), and that the inclination of the cleaner allows the operator to have greater control over it while putting less strain on an operator's back. It is respectfully submitted that it is simply not apparent how the device of

Bunch could be oriented, operated and lifted, in the manner described by claims 17 and 18 of the present application, in view of the description of column 3, lines 37-50 of Bunch.

2. **New claim 21, which is presented in place of Claim 19** In the discussions with the examiners, undersigned noted that the use of “consisting essentially of” while written in light of the references cited in the first office action, would distinguish from Bunch, because it would exclude the conduit portion 62, the manifold 52 and the apertures 56, 58 through which fluid is directed radially into the intake of Bunch to break of the gravel clusters. Those portions of Bunch are part of Bunch’s conduit system for effecting cleaning of the gravel clusters from a pond. The examiners position, while not articulated in the final rejection, was that the use of “consisting essentially of” in defining the conduit system did not exclude the portions 62, 52, 56 and 58 of Bunch. While undersigned disagrees, claim 19 has been withdrawn, and claim 21 has been presented, which is dependent from method claim 13, and which defines the cleaning device that is provided according to applicant’s invention “consists essentially” of the conduit system that itself consists essentially of the recited components. Since those components do not include the type of conduits such as 62, 52, 56 and 58 of Bunch, and since those components of Bunch are clearly essential parts of Bunch’s disclosed pond cleaning system, it is respectfully submitted that it is not disclosed in Bunch, or an obvious modification of Bunch, to exclude those components. Therefore, it is respectfully submitted that claim 21 is patentably distinct from Bunch.
3. **Claims 9-11** In the discussions with the examiners, the examiners initially invited undersigned to point to portions of the specification that would draw a distinction between the concept of “formed in one piece” and “formed as one piece in an assembly” as described by the examiners in the office action as meeting that language. Undersigned pointed, e.g. to paragraph 0013 and noted that paragraph 0013 explicitly drew a distinction between components that are “formed in one piece” and components that are secured together (i.e. “formed as one piece in an assembly”). The examiners suggested that if the word “monolithically” preceded “formed in one piece” such language would clearly exclude the concept of “formed as one piece in an assembly”. Moreover, in response to undersigned’s inquiry as to

whether there were any new matter issues in adding that word, the examiner's stated unequivocally that the word "monolithically" is clearly supported by paragraph 0013 and raises no new matter issues. Accordingly, it is respectfully submitted that claims 9-11 are clearly novel over Bunch.

4. **Remaining Claims** Claim 1 has also been amended above to define the applicant's device as configured to be used to clean a landscape surface that is directly exposed to the atmosphere. For reasons similar to those set forth above, it is respectfully submitted that Bunch is not designed to clean a landscape surface. In addition, claim 1 has been amended to further recite, *inter alia*, that the intake portion has a substantially constant cross section area from the intake opening to the outlet portion. Support for that recitation is clearly provided by the figures, and by the depiction and description of the inside diameter 121 of the intake. Bunch is specifically directed to a pond cleaner that includes a relatively wide upper housing 18, an inwardly tapering lower portion 28, and a relatively narrow intake 20. Bunch's outlet 34 is in direct fluid communication with the relatively wider upper housing 18. At column 2, lines 45-57, Bunch explains the structure and relation of outlet 34, upper housing 18, inwardly tapering lower portion 28 and lower housing portion 20. Bunch further explains, at column 3, lines 51-65, that the pumping rate of water through outlet 34 is such that the water velocity through the lower [relatively narrower] housing 20 is sufficient to lift the gravel into the lower housing 20, but not into the outlet 34. Clearly, Bunch considers the structure and relation of the upper and lower housing portions 18, 20, the inwardly tapering portion 28, and the outlet to be an important aspect of his pond cleaner. That structure and relation does **not** include, *inter alia*, **an intake portion with a substantially constant cross section area from the intake opening to the outlet portion**, as recited by amended claim 1. In Bunch, if the lower housing 20 is the intake, it directly communicates with a wider upper housing 18, not with a smaller diameter outlet conduit. On the other hand, if the upper and lower housings 18, 20 are the intake, such an intake clearly does not have an intake with a substantially constant cross section area from the inlet opening to the outlet portion. Moreover, to modify Bunch, to provide such structure would require giving up Bunch's basic pond cleaning structure, and would be apparent for cleaning a

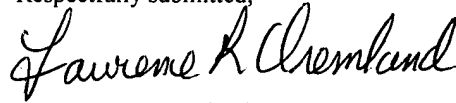
landscape surface only from applicant's disclosure, and not from any teaching or suggestion of Bunch.

In addition, with respect to claims 4-6, which define preferred angles between the intake portion and part of the outlet portion, in the final rejection, the examiners state that those angles are a matter of design choice, and that no criticality has been assigned to those angles. It is respectfully submitted that such a statement is not evidence that one of ordinary skill would be motivated to provide such angles. Moreover, the specification, at paragraph 0018, notes that the preferred angle (90 degrees) in combination with the preferred orientation of the intake relative to the landscape surface provides a favorable pressure gradient within the cleaning device as material is being drawn into the cleaning device. It is respectfully submitted that either such evidence should be provided, or the rejection of claims 4-6 based on Bunch should be withdrawn.

Accordingly, for the reasons set forth above, it is respectfully submitted that the present invention, as set forth by claims 1-7, 9-11, 13-18 and 20, 21 above, is not disclosed in or obvious from Bunch or any of the other cited references.

Favorable action is respectfully requested.

Respectfully submitted,



Lawrence R. Oremland
Reg. No. 27,046
Attorney for Applicant

Lawrence R. Oremland, P.C.
5055 East Broadway Blvd., Suite C-214
Tucson, AZ 85711
Tel. (520) 747-0999
Fax. (520) 747-0977
E-mail: larry@oremland.com